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11 **UNITED STATES DISTRICT COURT**

12 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

13
14 NATIONAL ASSOCIATION OF
15 AFRICAN AMERICAN-OWNED
16 MEDIA, a California limited liability
17 company; and ENTERTAINMENT
18 STUDIOS NETWORKS, INC., a
19 California corporation,

20 Plaintiffs,

21 v.

22 COMCAST CORPORATION, a
23 Pennsylvania corporation; TIME
24 WARNER CABLE, INC., a Delaware
corporation; and DOES 1 through 10,
inclusive,

25 Defendants.

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CASE NO. 2:15-cv-01239-TJH-MAN
FIRST AMENDED COMPLAINT
FOR RACIAL DISCRIMINATION
IN VIOLATION OF 42 U.S.C.
§ 1981; AND FOR DAMAGES AND
INJUNCTIVE RELIEF

DEMAND FOR JURY TRIAL

1 Plaintiffs National Association of African American–Owned Media
2 (“NAAAOM”) and Entertainment Studios Networks, Inc. (“Entertainment Studios”)
3 allege against Defendants Comcast Corporation (“Comcast”), Time Warner Cable,
4 Inc. (“Time Warner Cable”), and DOES 1 through 10, inclusive, (collectively,
5 “Defendants”) as follows:

INTRODUCTION

7 1. This case is about racial discrimination in contracting by Defendants
8 Comcast and Time Warner Cable, two of the largest cable television companies in
9 the United States. It involves refusals to contract and contracting on unequal and
10 discriminatory terms.

11 2. Plaintiff Entertainment Studios is a 100% African American-owned
12 media company involved in the production and distribution of television
13 programming through broadcast television, its seven cable television channels, and
14 its subscription-based internet service. It is the only 100% African American-
15 owned video programming producer and multi-channel operator/owner in the
16 United States (because the other 100% African American-owned media companies
17 have been shut out and were eventually forced out of business).

18 3. Comcast and Time Warner Cable refuse to do business with truly
19 African American–owned media companies, including Entertainment Studios.
20 Instead, Comcast devised a strategy to shut out African American–owned media
21 companies and, in the process, bamboozled President Obama and the federal
22 government in the process.

23 4. To that end, Comcast entered into a phony memorandum of
24 understanding (“MOU”) with non-media civil rights groups, which it submitted to
25 the FCC in order to secure approval of its 2011 acquisition of NBC-Universal. But
26 as set forth herein, the MOU actually did nothing to promote the inclusion of truly
27 African American–owned media companies in the media industry. Quite the
28 opposite, Comcast has used the MOU against Entertainment Studios to perpetuate

1 its racial discrimination in contracting for channel carriage.

2 5. After filing this lawsuit, Plaintiffs learned that they are not alone—
 3 Comcast’s racial discrimination has affected a number of other African American–
 4 owned networks and channels.

5 6. For example, Comcast’s discriminatory contracting practices led to the
 6 demise of Black Family Channel, a network that was created by renowned African
 7 American attorney Willie E. Gary and other prominent African Americans,
 8 including baseball legend Cecil Fielder, former heavyweight boxing champion
 9 Evander Holyfield, Marlon Jackson of Jackson Five fame, and television executive
 10 Alvin James.

11 7. And after stringing along another 100% African American–owned
 12 channel—Historically Black Colleges and Universities Network (“HBCU
 13 Network”—Comcast pulled the plug on the carriage deal they had been negotiating
 14 before the Comcast/NBC-Universal merger was approved in 2011. Comcast told
 15 HBCU Network that it could obtain carriage on Comcast’s television distribution
 16 system only via the “MOU Process”—an inherently unequal and discriminatory
 17 track for minority-owned networks. Other examples of Comcast’s racial
 18 discrimination in contracting for carriage abound and will be brought forth in
 19 discovery in this action.

20 8. Comcast and Time Warner Cable collectively spend approximately \$25
 21 billion annually for the licensing of pay-television channels and advertising of their
 22 products and services (\$20 billion licensing and \$5 billion advertising), yet 100%
 23 African American–owned media companies receive less than \$3 million from these
 24 companies per year. This discrepancy is the result of—and evidences—racial
 25 discrimination in contracting, in violation of the Civil Rights Act of 1866, 42 U.S.C.
 26 § 1981.

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PARTIES, JURISDICTION AND VENUE

A. Plaintiffs

9. Plaintiff NAAAOM is a California limited liability company, with its principal place of business in Los Angeles, California.

10. NAAAOM was created and is working to obtain for African American-owned media the same contracting opportunities as their white counterparts for distribution, channel carriage, channel positioning and advertising dollars. Its mission is to secure the economic inclusion of truly African American-owned media in contracting, the same as white-owned media. NAAAOM currently has six members and, possibly, more in the offing.

11. Historically, because of the lack of distribution/advertising support and economic exclusion, African American-owned media has been forced either to (i) give away significant equity in their enterprises, (ii) pay exorbitant sums for carriage, effectively bankrupting the business, or (iii) go out of business altogether, pushing African American-owned media to the edge of extinction.

12. As alleged herein, Entertainment Studios—a member of NAAAOM—is being discriminated against on account of race in violation of 42 U.S.C. § 1981. Entertainment Studios thus has standing to seek redress for such violations in its own right. The interests at stake in this litigation—namely, the right of African American-owned media companies to make and enforce contracts in the same manner as their white-owned counterparts—are germane to NAAAOM’s purpose. Because NAAAOM seeks only injunctive relief, the individual participation of its members is not required.

13. Plaintiff Entertainment Studios Networks, Inc. is a California corporation, with its principal place of business in Los Angeles, California. Entertainment Studios is a 100% African American-owned television production and distribution company. It is the only 100% African American-owned video programming producer and multi-channel operator/owner in the United States.

1 14. Entertainment Studios is certified as a bona fide Minority Business
 2 Enterprise as defined by the National Minority Supplier Development Council, Inc.
 3 and as adopted by the Southern California Minority Supplier Development Council.

4 15. Entertainment Studios was founded in 1993 by Byron Allen, an African
 5 American actor/comedian/media entrepreneur. Allen is the sole owner of
 6 Entertainment Studios. Allen first made his mark in the television world in 1979,
 7 when he was the youngest comedian ever to appear on “The Tonight Show Starring
 8 Johnny Carson.” He thereafter served as the co-host of NBC’s “Real People,” one
 9 of the first reality shows on television. Alongside his career “on-screen,” Allen
 10 developed a keen understanding of the “behind the scenes” television business, and
 11 over the past 22+ years he has built Entertainment Studios as an independent media
 12 company.

13 16. Entertainment Studios has carriage contracts with more than 40
 14 television distributors nationwide, including VerizonFIOS, Suddenlink, RCN and
 15 CenturyLink. These television distributors broadcast Entertainment Studios’
 16 networks to their combined 7.5 million subscribers.

17 17. Entertainment Studios owns and operates seven, high definition
 18 television networks (channels), six of which were launched to the public in 2009 and
 19 one in 2012. Entertainment Studios produces, owns, and distributes over 32
 20 television series on broadcast television, with thousands of hours of video
 21 programming in its library. Entertainment Studios’ shows have been nominated for,
 22 and won, the Emmy award. A copy of an Entertainment Studios promotional
 23 presentation highlighting key aspects of the company and the programming it
 24 produces is attached hereto as **Exhibit A**.

25 18. In December 2012, Entertainment Studios launched “Justice Central,” a
 26 24-hour, high definition court/informational channel featuring several Emmy-
 27 nominated and Emmy-award winning legal/court shows. After just two years,
 28 Justice Central has already proved itself a successful channel. Justice Central has

1 boasted tremendous ratings growth across key television viewing periods and
 2 demographics.

3 **B. Defendants**

4 19. Comcast Corporation is a Pennsylvania corporation, with its principal
 5 place of business in Philadelphia, Pennsylvania. Comcast also has an office, is
 6 registered to do business and operates in Los Angeles, California. Comcast is a
 7 global media giant. It owns NBC Television, Universal Pictures, Universal Studios,
 8 multiple (approximately 30) pay television channels (*e.g.*, USA Network, Bravo
 9 Network, E! Network, etc.), and it is one of the largest cable companies and internet
 10 service providers in the United States. Comcast provides subscription television
 11 services to approximately 22 million subscribers—more than any other cable
 12 television distributor in the United States. It has near-monopolistic control over the
 13 cable market in several major geographic markets across the United States.

14 20. Time Warner Cable, Inc. is a Delaware corporation, with its principal
 15 place of business in New York, New York. Time Warner Cable also has an office,
 16 is registered to do business and operates in Los Angeles, California.

17 21. Plaintiffs are informed and believe, and on that basis allege, that
 18 Defendants DOES 1 through 10, inclusive, are individually and/or jointly liable to
 19 Plaintiffs for the wrongs alleged herein. The true names and capacities, whether
 20 individual, corporate, associate or otherwise, of Defendants DOES 1 through 10,
 21 inclusive, are unknown to Plaintiffs at this time. Accordingly, Plaintiffs sue
 22 Defendants DOES 1 through 10, inclusive, by fictitious names and will amend this
 23 Complaint to allege their true names and capacities after they are ascertained.

24 **C. Jurisdiction & Venue**

25 22. This case is brought under a federal statute, § 1981 of the Civil Rights
 26 Act; as such, there is federal question jurisdiction under 28 U.S.C. § 1331. Venue of
 27 this action is proper in Los Angeles because Defendants reside in this district, as
 28 defined in 28 U.S.C. § 1391; and the acts in dispute were committed in this district.

FACTS

A. Racial Discrimination in the Media

23. Racial discrimination in contracting is an ongoing practice in the media industry with far-reaching adverse consequences. It effectively excludes African American-owned media companies and African American individuals, and their diverse viewpoints, from the public airwaves.

24. Major television channel distributors, like Comcast and Time Warner Cable, have unique power to limit the viewpoints available in the public media.

Channel owners, like Entertainment Studios, are reliant upon the services of television distributors, like Comcast and Time Warner Cable, to provide access to their distribution platform not only to realize subscriber and advertising revenue, but also to reach television consumers themselves.

25. Comcast and Time Warner Cable have control over television distribution on their cable platforms; their exclusion of African American-owned channels has resulted in the near-extinction of 100% African American ownership in mainstream media, and this exclusion is self-perpetuating.

26. There is a statistic that highlights the inequity here: Comcast's Chairman, Brian L. Roberts, was paid \$32.9 million in compensation in 2014 alone—ten times more than all of Comcast paid to 100% African American-owned media for channel carriage and advertising combined during the same period. Additionally, the CEO of Time Warner Cable during the same period (2014) was paid approximately \$34.6 million, again, more than ten times the amount all of Time Warner Cable paid to 100% African American-owned media for channel carriage and advertising.

27. White-owned media in general—and Comcast in particular—has worked hand-in-hand with governmental regulators to perpetuate the exclusion of truly African American-owned media from contracting for channel carriage and advertising. This has been done through, among other things, the use of “token

1 fronts" and "window dressing"—African American celebrities posing as "fronts" or
 2 "owners" of so-called "Black cable channels" that are actually majority owned and
 3 controlled by white-owned businesses.

4 28. Comcast is a powerful political player in Washington, D.C. and has
 5 used its clout and money to obtain regulatory approval for its acquisitions and sweep
 6 its racist practices under the rug. Comcast's chief lobbyist and executive vice
 7 president, David Cohen, is a major political fundraiser and the mastermind behind
 8 Comcast's conflicts of interest and wrongdoing recounted herein.

9 29. Comcast influenced and secured favorable votes from government
 10 regulators—including Federal Communications Commission ("FCC")
 11 commissioner Meredith Attwell Baker—for approval of the Comcast/NBC-
 12 Universal transaction; and then hired Baker as an executive shortly after she cast her
 13 vote and approved the deal. Comcast rewarded this government regulator with an
 14 executive position and a substantially higher salary after she used her power at the
 15 FCC to Comcast's benefit. This executive position and compensation package
 16 would not have been granted by Comcast had Ms. Baker voted against the merger.

17 **B. Comcast Enters into Sham Memoranda of Understanding with Non-**
Media Civil Rights Groups

18 30. In connection with its 2010 bid to acquire NBC-Universal, Comcast
 19 was criticized for its refusal to do business with independent and minority-owned
 20 media companies, including African American-owned media companies. The
 21 Comcast/NBC-Universal merger was subject to regulatory approval by the FCC and
 22 the Department of Justice.

23 31. Entertainment Studios and other minority-owned media companies
 24 opposed the merger, publicly criticizing Comcast for its failure to do business with
 25 African American-owned media companies. Entertainment Studios urged the FCC
 26 to impose merger conditions that would address Comcast's discriminatory practices
 27 in contracting for channel carriage.

1 32. When Comcast's racist practices and policies jeopardized the approval
 2 of the NBC-Universal acquisition, Comcast manipulated ways to secure merger
 3 approval while perpetuating its exclusion of African American-owned channels. In
 4 order to gain approval of its acquisition of NBC-Universal, Comcast gave millions
 5 in monetary "contributions" to various non-media minority special interest groups in
 6 order to "buy" support for its expansion.

7 33. Comcast "donated" funds to at least 54 different groups that went on
 8 publicly to endorse the Comcast/NBC-Universal deal. And after buying their
 9 support, Comcast entered into what it termed "voluntary diversity agreements," *i.e.*,
 10 memoranda of understanding ("MOUs"), with non-media civil rights groups,
 11 including NAACP, National Urban League and Al Sharpton's National Action
 12 Network. These non-media civil rights groups are not television channel owners
 13 and do not operate in the television channel business. They do not produce original
 14 television programming, or operate television channels, unlike Entertainment
 15 Studios, which does both.

16 34. Through the MOUs, Comcast purported to address the widespread
 17 concerns regarding the lack of diversity in channel ownership on its systems by,
 18 among other things, committing to launch several new networks with minority
 19 ownership and establishing "external Diversity Advisory Councils" to advise
 20 Comcast as to its "diversity practices," including in contracting for carriage. The
 21 MOUs were a smokescreen designed to secure merger approval without obligating
 22 Comcast to do business with truly African American-owned media companies.

23 35. Each of the signatories to the MOU between Comcast and the "African
 24 American Leadership Organizations" were paid by Comcast in the time leading up
 25 to the Comcast/NBC-Universal deal. Comcast paid \$30,000 to the NAACP,
 26 \$835,000 to the National Urban League, and \$140,000 to Al Sharpton's National
 27 Action Network. Comcast also paid hundreds of thousands of dollars to the
 28 National Urban League's various regional affiliates.

1 36. Comcast has also paid Reverend Al Sharpton and Sharpton's National
 2 Action Network over \$3.8 million in "donations" and as salary for the on-screen
 3 television hosting position on MSNBC that Comcast awarded Sharpton in exchange
 4 for his signature on the MOU. Despite the notoriously low ratings that Sharpton's
 5 show generates, Comcast allows Sharpton to maintain his hosting position for more
 6 than three years in exchange for Sharpton's continued public support for Comcast
 7 on issues of diversity.

8 37. Comcast paid Sharpton so that he would publicly endorse the NBC-
 9 Universal deal and divert attention away from Comcast's racial discrimination in
 10 contracting. In exchange, Sharpton's National Action Network and other non-media
 11 minority interest groups supported Comcast before the FCC with very little
 12 understanding about the merger or expertise in the media business.

13 38. The MOUs were given the appearance of legitimacy because they were
 14 approved by minority interest groups—NAACP, National Urban League, and Al
 15 Sharpton's National Action Network, none of which own or operate any television
 16 channels, and all of which accepted large donations/pay-offs for their signatures.

17 39. Ironically, as reported in *The New York Times*, Comcast spent millions
 18 of dollars to pay non-media civil rights groups to support its acquisition of NBC-
 19 Universal, while at the same time refusing to do business with African American-
 20 owned media companies. These payments were a ruse made with an ulterior
 21 motive: To make Comcast look like a good corporate citizen while it steadfastly
 22 refused to contract with African American-owned media companies.

23 40. The MOU was signed by Comcast's then-Executive Vice President and
 24 Chief Diversity Officer David Cohen. Mr. Cohen was integral in structuring and
 25 getting the Comcast / NBC-Universal merger approved, including by acting as one
 26 of the main architects of the (phony) MOU. On information and belief, Mr. Cohen
 27 also oversees and signs off on the Annual Compliance Reports that Comcast submits
 28 to the FCC, in which Comcast misleadingly claims to be doing business with

1 African American owned-and-operated channels when, in fact, the channels
 2 Comcast has launched pursuant to the MOU are owned, controlled and backed by
 3 white-owned media and money.

4 41. The “Diversity Advisory Councils” Comcast established are also
 5 shams. Not only do the Council members have limited understanding of the cable
 6 industry and little-to-no experience operating cable networks, but Comcast has not
 7 given the Council any real authority to “advise” Comcast as to its diversity
 8 initiatives in contracting for carriage. Instead, Comcast gave the Council a standard
 9 tour of its offices, and never even asked its members about channel carriage.

10 **C. Comcast Uses the MOU to Discriminate Against Media Companies with**
 11 **Truly “Majority or Substantial” African American Ownership**

12 42. In light of the concerns about Comcast’s failure to do business with
 13 independent, minority-owned media companies, Comcast had a problem. The sham
 14 MOUs solved it: Through the MOUs, Comcast purportedly agreed to enter into
 15 carriage agreements with minority-owned media companies; but the channels that
 16 were ultimately launched were fronts and were not truly minority-owned.

17 43. Through the MOU with the African American non-media civil rights
 18 organizations, Comcast purportedly agreed to enter into carriage agreements to
 19 distribute programming networks in which African Americans have “**majority or**
 20 **substantial**” ownership interest and to add these networks on commercially
 21 comparable and competitive terms.

22 44. But Comcast has done just the opposite. Comcast has used the MOU to
 23 facilitate its racist practices and policies in contracting—or, more accurately,
 24 refusing to contract—with media companies with truly “majority or substantial”
 25 African American ownership. It has not contracted with majority or substantially
 26 owned African American media. The MOU is a sham.

27 45. With the MOU in hand, Comcast proceeded to segregate media
 28 businesses with “majority or substantial” African American ownership by creating

1 two separate paths for contracting for channel carriage: one for non-minority-owned
 2 channels and a separate, but not equal, process for African American-owned
 3 channels (the “MOU Process”).

4 46. The MOU Process is distinctly unequal from Comcast’s normal process
 5 for contracting for carriage. Comcast limits the number of carriage agreements it
 6 will enter into through the MOU Process and offers inferior contracting terms. The
 7 MOU thus furthers Comcast’s discriminatory practices against African American-
 8 owned channels. Comcast has used the MOU to create a segregated and unequal
 9 path for African American-owned channels to contract for carriage.

10 47. By relegating companies with “majority or substantial” African
 11 American ownership to the MOU Process, Comcast affords them inferior or no
 12 contracting opportunities. By contrast, media companies without “majority or
 13 substantial” African American ownership are able to contract with Comcast for
 14 carriage at any time via Comcast’s normal process for contracting for carriage.

15 48. Comcast refuses to contract with African American-owned media
 16 companies—such as Entertainment Studios—through its normal contracting
 17 process. African American-owned channels are thus being denied the same
 18 opportunity to contract with Comcast as channels without majority or substantial
 19 African American ownership. The MOU Process constitutes intentional
 20 discrimination.

21 49. In addition to these racial restrictions, African American-owned media
 22 companies face further inequities in the terms and conditions Comcast offers to the
 23 channels it chooses through the MOU Process. Comcast has offered shorter-term
 24 deals and little, if any, in licensing fees to the channels it launches through the MOU
 25 Process. These less favorable contracting terms make it difficult—if not
 26 impossible—for the channels launched through the MOU Process to succeed.

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1 D. **In Violation of the MOU, Comcast Has Not Launched Any Independent**
 2 **Networks with “Majority or Substantial” African American Ownership**

3 50. The “diversity” commitments Comcast made through the MOU are
 4 fraudulent. The MOU was purportedly intended to result in the launch of so-called
 5 “minority-owned” networks—*i.e.*, networks “in which African Americans have a
 6 **majority or substantial** ownership interest.” In reality, the networks Comcast has
 7 launched pursuant to the MOU are owned, controlled, and backed by white-owned
 8 media and money. Comcast has given African American celebrities token
 9 ownership interests in those channels to serve as figureheads in order to cover up its
 10 racial discrimination in contracting.

11 51. For example, one of the supposedly “Black channels” Comcast
 12 launched—*REVOLT*—is actually owned by Highbridge Capital, which is run by a
 13 former Comcast executive who reported directly to David Cohen, Payne Brown.
 14 Highbridge Capital is also a subsidiary of JP Morgan, whose Board of Directors
 15 includes Comcast’s President and COO, Steve Burke. The other supposed “Black
 16 channel” Comcast launched—*Aspire*—is actually owned by Intermedia Partners,
 17 which is owned/controlled by white businessman Leo Hindery, a long-time friend of
 18 Comcast’s CEO, Brian Roberts.

19 52. Although Comcast touts *REVOLT* and *Aspire* as satisfying its MOU
 20 commitments, neither is a network with truly **“majority or substantial”** African
 21 American ownership. These networks give African American celebrities token
 22 ownership interests but, in reality, are owned and operated by Comcast insiders.

23 53. The only channel with “majority or substantial” African American
 24 ownership that Comcast has launched—*The Africa Channel*—is owned and
 25 operated by a Comcast insider, Paula Madison. Madison is a former Comcast/
 26 NBC-Universal executive and oversaw the execution of the MOU.

27 54. In other words, aside from a channel that is owned and operated by the
 28 former Comcast/NBC-Universal executive who co-authored the MOU, Comcast has

1 not launched a single channel with majority or substantial African American
 2 ownership—by way of the MOU or otherwise.

3 55. Comcast made similar “diversity commitments” to the Hispanic
 4 community in order to secure approval of its bid to acquire NBC-Universal. But
 5 again, rather than launching any truly Hispanic-owned channels, Comcast launched
 6 “Baby First Americas”—a non-Hispanic-owned channel (the channel’s founders,
 7 owners and operators are Guy Oranim and his wife, Sharon Rechter, who are
 8 Israeli). Bill Burke—brother of Comcast’s President and COO, Steve Burke—is on
 9 the Board of Directors of Baby First Americas.

10 **E. Comcast and Time Warner Cable Refuse to Contract with**
 11 **Entertainment Studios on the Basis of Race**

12 56. Entertainment Studios, a 100% African American-owned media
 13 company, has been shut out from doing business with Comcast despite significant
 14 efforts to do so. Like many other African American-owned channels that have tried
 15 to secure cable carriage during Comcast’s 50+ year history, Entertainment Studios
 16 has had multiple meetings for channel carriage with Comcast but, like the others, to
 17 no avail. Comcast has discriminated against Entertainment Studios at every turn.

18 57. Entertainment Studios has been trying for several years to contract with
 19 Comcast for carriage of one or more of Entertainment Studios’ seven channels.
 20 Comcast has refused and strung Entertainment Studios along. Comcast has given
 21 Entertainment Studios the false impression that its channels are on Comcast’s “short
 22 list” and provides a variety of different excuses for its refusal to carry any of
 23 Entertainment Studios’ channels, even though the channels are widely viewed on
 24 Comcast’s competitors’ television distribution systems.

25 58. Comcast has been playing a game of “whack-a-mole” with
 26 Entertainment Studios—each time Entertainment Studios jumps a pretextual hurdle
 27 created by Comcast (*e.g.*, Comcast executive, Jennifer Gaiski, required
 28 Entertainment Studios to present empirical data and secure support “in the field” so

1 that she could present such material to Comcast senior management, Greg Rigdon
 2 and Neil Smit), Comcast replaces it with a new obstacle. Although Entertainment
 3 Studios has complied with each of Comcast's demands, Comcast still refuses to
 4 launch any of Entertainment Studios' channels.

5 59. For example, Comcast Corporate directed Entertainment Studios to
 6 garner support from Comcast's Division offices in order to bolster its carriage
 7 request. But when Entertainment Studios reached out to the different Divisions
 8 (Northeast, Central and West), the Divisions indicated that they "deferred to
 9 Corporate."

10 60. Comcast Corporate also emphasized the need for feedback from the
 11 Regions. But again, when Entertainment Studios received support from key
 12 Comcast Regions (e.g., Chicago, Southwest), Comcast Corporate nevertheless
 13 denied carriage. In some cases, Entertainment Studios was inconsistently advised
 14 *not* to meet with the Regions because all carriage decisions were funneled through
 15 Comcast Corporate. Comcast required Entertainment Studios to run around in
 16 circles—and spend hundreds of thousands of dollars on travel and expenses—
 17 without any intention of considering a carriage deal.

18 61. Comcast has used other phony excuses to justify its racial
 19 discrimination. For example, it claims that it does not have the bandwidth to
 20 accommodate Entertainment Studios' channels or that it is not a buyer of new
 21 channels. But meanwhile, Comcast has entered into carriage agreements with other
 22 non-minority-owned channels, belying its various pretextual excuses.

23 62. Comcast also claims that it is interested in adding carriage only for
 24 news and sports channels. This is yet another phony excuse. Comcast has added
 25 other, non-news, non-sports channels while simultaneously refusing to contract with
 26 Entertainment Studios and turning down another 100% African American-owned
 27 channel focused on black college sports, HBCU Network.

1 63. Comcast further claims that there is no demand for Entertainment
2 Studios' channels, but that, too, is belied by the facts: Entertainment Studios'
3 channels have a proven track record of high ratings and popularity among viewers
4 and are distributed by other national television providers. Entertainment Studios'
5 programming has garnered Emmy nominations and wins. Entertainment Studios
6 sells its channels to dozens of other programming distributors and television
7 stations, which distribute Entertainment Studios' channels to millions of subscribers.

8 64. For example, one of Entertainment Studios' most recently launched
9 channels, Justice Central, has achieved success in the short time it has been on the
10 air. Justice Central's double- to triple-digit ratings growth outperformed the vast
11 majority of networks that Comcast and Time Warner Cable pay substantial license
12 fees to carry. Indeed, between the first quarter of 2013 and the fourth quarter of
13 2014, Justice Central boasted huge ratings growth on AT&T's television platform,
14 as follows:

Justice Central – AT&T U-Verse Ratings Growth

<u>Daypart:</u>	<u>Air Time:</u>	<u>% Growth 1st Qtr. 2013 to 4th Qtr. 2014:</u>
Early Fringe	4-7pm	+38%
Prime Access	7-8pm	+21%
Prime	8-11pm	+53%
Late Fringe	11pm-2am	+552%
Overnight	2-6am	+295%

23 65. Entertainment Studios even offered for Comcast to launch Justice
24 Central *for free*, but Comcast still insisted that Entertainment Studios proceed via
25 the MOU Process in its attempts to obtain carriage. This is evidence that Comcast's
26 decision is based on racial animus and retaliation for Entertainment Studios'
27 opposition to the Comcast/NBC-Universal merger, rather than legitimate business
28 considerations.

1 66. Entertainment Studios did not know that Comcast was using the MOU
 2 as a vehicle to perpetuate racial discrimination in contracting until recently. In
 3 November 2014, Entertainment Studios first discovered that Comcast had set up
 4 dual paths for negotiating for carriage (one for non-minority-owned media and one
 5 for African American-owned media) when it was told by Comcast that it would be
 6 relegated to the MOU Process. These two paths for carriage are separate, but not
 7 equal—the very definition of discrimination.

8 67. Comcast has admitted that it is “impressed” by Entertainment Studios’
 9 programming and channels, but has excluded Entertainment Studios from obtaining
 10 carriage through Comcast’s normal contracting process. Instead, Comcast has
 11 forced this 100% African American-owned media company to apply for carriage
 12 through the “MOU Process.”

13 68. For example, in November 2014, a Comcast executive told
 14 Entertainment Studios that although its channels were good enough for carriage on
 15 Comcast’s platform, Entertainment Studios would have to wait to be part of the
 16 “next round of [MOU] considerations.”

17 69. In other words, Comcast told Entertainment Studios that it would
 18 consider contracting to carry Entertainment Studios’ channels only to the extent that
 19 the carriage agreement would satisfy Comcast’s obligation to launch networks with
 20 “majority or substantial” African American ownership pursuant to the MOU. But as
 21 described above, the MOU Process has never resulted in the launch of channels with
 22 truly “majority or substantial” African American ownership.

23 70. Comcast has, in essence, created a “Jim Crow” process with respect to
 24 licensing channels from media companies with “majority or substantial” African
 25 American ownership. Comcast has reserved a few spaces for African American-
 26 owned media companies in the “back of the bus,” while the rest of the bus is
 27 occupied by non-African-American-owned media companies. This is racial
 28 discrimination in contracting.

1 71. Entertainment Studios is restricted to applying for carriage with
 2 Comcast via the MOU Process not because of the nature of its channels—which are
 3 broad market with global appeal—but because it is African American-owned. For
 4 racial reasons alone, Entertainment Studios is forced to participate in a
 5 discriminatory process. This is racial discrimination in contracting, in violation of
 6 42 U.S.C. § 1981.

7 72. The MOU enables Comcast to tout a phony, non-existent
 8 “commitment” to racial diversity. All the MOU has done is allow Comcast to
 9 “legitimize” its racist policies and practices so it can continue to refuse to do
 10 business with African American-owned media companies.

11 73. According to Comcast, Entertainment Studios must go through the
 12 MOU Process for obtaining channel carriage. This prevents Entertainment Studios
 13 from being treated equally with its non-minority-owned/controlled counterparts.

14 74. These are violations of § 1981: Comcast’s refusal to contract with
 15 media companies with majority or substantial African American ownership; its
 16 implementation of dual paths for carriage (*i.e.*, one path for non-minority-owned
 17 media and a separate “MOU Process” for African American-owned media
 18 companies); its discrimination in the contractual terms it offers to African
 19 American-owned media companies; and its pretextual excuses for refusing to
 20 contract.

21 75. Comcast’s discriminatory intent is further evidenced by the fact that of
 22 the approximately \$10 billion in content fees that Comcast pays to license channels
 23 and advertise each year, less than \$3 million is paid to 100% African American-
 24 owned media. The payments Comcast makes to African American-owned media
 25 companies are tokens and a charade. Comcast pays minimal amounts to license and
 26 distribute the Africa Channel, which is owned and operated by a former
 27 Comcast/NBC-Universal executive/insider, Paula Madison, one of the architects of
 28 the MOU Comcast uses to perpetuate its racial discrimination in contracting.

1 76. Time Warner Cable likewise refuses to contract with Entertainment
 2 Studios on the basis of race. Outside of a single channel (Africa Channel) that is
 3 owned and operated by the former Comcast executive, Time Warner Cable does not
 4 distribute any channels that are owned and operated by 100 % African American–
 5 owned media companies either.

6 77. In the time leading up to the then-pending merger between Comcast
 7 and Time Warner Cable, Entertainment Studios had made progress negotiating the
 8 terms of a possible carriage deal with Time Warner Cable. But then Comcast
 9 programming executive, Jennifer Gaiski, asked who Entertainment Studios was in
 10 discussions with at Time Warner Cable about launching its channels.

11 78. Entertainment Studios disclosed that it had advanced negotiations with
 12 Time Warner Cable executive, Melinda Witmer (who was presenting Entertainment
 13 Studios' information to Time Warner Cable President and COO, Robert Marcus).
 14 Soon thereafter, Entertainment Studios' channel launch opportunity was shut down
 15 by Time Warner Cable under orders from Comcast.

16 79. Thus, in the face of the then-pending pending merger between Comcast
 17 and Time Warner Cable, Time Warner Cable delegated channel carriage decision-
 18 making to Comcast—“gun jumping” the consummation of the Comcast / Time
 19 Warner Cable merger in violation of federal law. Time Warner Cable thus adopted
 20 Comcast's racist policies and practices in connection with refusing to contract with
 21 Entertainment Studios.

22 80. Entertainment Studios is being discriminated against on account of race
 23 in connection with contracting in violation of the Civil Rights Act. Without access
 24 to viewers and without licensing fees and advertising revenues from the largest
 25 video programming distributors in the country, this 100% African American–owned
 26 media business is being shut out and severely damaged, like all other truly African
 27 American–owned media networks.

28

1 **F. Comcast's History of Racial Discrimination Against African American–**
 2 **Owned Media Companies**

3 81. Comcast's discrimination against Entertainment Studios, as detailed
 4 herein, is part and parcel of a pattern of racial discrimination this media giant has
 5 perpetrated for decades. Indeed, Comcast cannot identify a single independent
 6 100% African American–owned network that it has distributed on its television
 7 platform in its 50+ years of operation. As set forth below, Comcast has historically
 8 discriminated against African American–owned media companies in contracting for
 9 channel carriage in favor of media companies that are owned and operated by white
 10 Comcast cronies.

11 **Black Family Channel**

12 82. Entertainment Studios is not the first African American–owned media
 13 company to contemplate legal action against Comcast for its blatant racial
 14 discrimination in contracting. Another is MBC Network (later known as Black
 15 Family Channel), which threatened to sue Comcast for its racial discrimination in
 16 contracting—even going so far as to draft a lawsuit alleging violations of 42 U.S.C.
 17 § 1981, the same claim asserted herein.

18 83. Black Family Channel was founded by renowned African American
 19 attorney Willie E. Gary and other prominent African American entrepreneurs,
 20 including baseball legend Cecil Fielder, former heavyweight boxing champion
 21 Evander Holyfield, Marlon Jackson of Jackson Five fame, and television executive
 22 Alvin James.

23 84. From its launch in 1999 until 2002, the Black Family Channel was
 24 distributed to millions of viewers on Comcast's television system. Beginning in
 25 2002, however, Comcast informed Black Family Channel that to guarantee
 26 continued carriage on Comcast's systems, Black Family Channel would need to give
 27 Comcast a significant ownership interest in the company.

28

1 85. When Black Family Channel refused, Comcast began retaliating and
 2 discriminating against this 100% African American–owned media company.
 3 Comcast halted the expansion of Black Family Channel in new markets; placed
 4 Black Family Channel on a more expensive, less-penetrated, less-favorable program
 5 tier; and gave Black Family Channel inferior channel positioning. Comcast
 6 additionally withdrew advertising opportunities from Black Family Channel,
 7 eliminating an important revenue source for the network.

8 86. Comcast deliberately discriminated against Black Family Channel in
 9 contracting for carriage on the basis of race. Indeed, Comcast did not require
 10 similarly situated, white-owned networks to give Comcast an ownership interest in
 11 their networks in order to secure carriage on favorable, non-discriminatory terms.

12 87. As a result of Comcast’s discrimination, Black Family Channel was
 13 denied increased carriage and licensing fees, leading to the network’s demise. The
 14 network was eventually sold to Gospel Music Channel, a network that was
 15 financially backed and controlled by white businessman Leo Hindery. (Due to
 16 Comcast’s discrimination and concomitant limited distribution of Black Family
 17 Channel, the network was undervalued and sold for less than \$10 million.)

18 88. After Black Family Channel was taken over by a white businessman,
 19 Comcast rolled out the red carpet for the network: Comcast agreed to enter into a
 20 carriage agreement with Gospel Music Channel and to broadly distribute the
 21 network on its cable platform. Today, Leo Hindery is undertaking efforts to sell the
 22 network (now called Up TV) for approximately \$550 million—in other words,
 23 Black Family Channel’s value has increased more than 50-fold by virtue of
 24 Comcast’s newfound willingness to do business with the network now that it is
 25 white-owned.

26 **HBCU Network**

27 89. Comcast also discriminated on the basis of race in its dealings with
 28 Historically Black Colleges and Universities (“HBCU”) Network, another African

1 American–owned network. HBCU Network is a sports, entertainment and lifestyle
 2 network devoted to historically black colleges and universities. It was created by
 3 two African American media entrepreneurs, Curtis Symonds and Clint Evans. Mr.
 4 Symonds is a cable industry veteran—he was an executive at ESPN for eight years
 5 and served as Executive Vice President, Distribution and Marketing for BET
 6 Networks for more than 14 years. HBCU Network pledged to give back to the black
 7 colleges and universities by partnering with them and sharing in the network’s
 8 ownership and profits.

9 90. Mr. Symonds has detailed Comcast’s discriminatory dealings with
 10 HBCU Network in writing, as follows: HBCU Network met with Comcast’s then–
 11 Senior Vice President of Programming, Madison Bond, and his executive team to
 12 negotiate a carriage agreement. Comcast told Mr. Symonds that it was excited
 13 about the network and, soon after the meeting, Comcast offered HBCU Network a
 14 20-year carriage deal, including license fees.

15 91. As HBCU Network was moving forward to finalize the terms of its
 16 carriage deal, Comcast pulled the rug out from under the network: Comcast told
 17 HBCU Network that in light of the merger between Comcast and NBC-Universal,
 18 Comcast was required to launch a certain number of minority-owned networks and
 19 even though HBCU Network had been at a very advanced stage of negotiations for
 20 carriage, it would need to start over and proceed via the application process for
 21 minority-owned networks (*i.e.*, the “MOU Process” described herein).

22 92. In other words, because—and only because—HBCU Network was an
 23 African American–owned network, it was forced to proceed via the MOU Process
 24 rather than finalizing the carriage deal that had already been underway through
 25 Comcast’s normal contracting process.

26 93. Instead of launching HBCU Network via the MOU Process, Comcast
 27 turned them away completely. After Comcast had (purportedly) satisfied its MOU
 28 commitment, it was unwilling to do business with this 100% African American–

1 owned network.

2 **Soul Train**

3 94. “Soul Train” is an iconic African American–owned television series
 4 created by the late Don Cornelius, a successful African American television
 5 producer. Like Black Family Channel and HBCU Network, Comcast also refused to
 6 do business with Don Cornelius Productions, a 100% African American–owned
 7 media company that wanted to launch a Soul Train network. Comcast shut them
 8 out, forcing them to sell the Soul Train franchise to the same white businessman,
 9 Leo Hindery, who bought the Black Family Channel at a steep, below-market
 10 discount.

11 **FIRST CAUSE OF ACTION: VIOLATION OF CIVIL RIGHTS**

12 **(42 U.S.C. § 1981)**

13 **NAAAOM and Entertainment Studios Against Comcast & Time Warner Cable**

14 **A. Section 1981**

15 95. NAAAOM refers to and incorporates by reference each foregoing and
 16 subsequent paragraph of this Complaint as though fully set forth herein.

17 96. Comcast and Time Warner Cable have engaged in, and are engaging in,
 18 pernicious, intentional racial discrimination in contracting, which is illegal under
 19 § 1981. Section 1981 is broad, covering “the making, performance, modification,
 20 and termination of contracts, and the enjoyment of all benefits, privileges, terms,
 21 and conditions of the contractual relationship.”

22 97. African Americans are a protected class under Section 1981.
 23 Entertainment Studios is a 100% African American–owned media business.

24 98. As alleged herein, Entertainment Studios attempted many times over
 25 many years to contract with Comcast and Time Warner Cable to carry its channels,
 26 but these television distributors have refused, providing a series of phony, pretextual
 27 excuses. Yet Comcast and Time Warner Cable have continued to contract with—
 28 and make themselves available to contract with—similarly situated white-owned

1 television channels.

2 99. Comcast has refused to contract with Entertainment Studios for channel
 3 carriage and advertising. Entertainment Studios has been deprived of the right to
 4 contract with Comcast by being relegated to the MOU Process, while non-minority-
 5 owned businesses have been afforded the right to contract with Comcast through its
 6 normal, more accessible process.

7 100. Comcast has dealt with Entertainment Studios and other African
 8 American-owned media companies in a markedly hostile manner and in a manner
 9 which a reasonable person would find discriminatory. Comcast has a pattern and
 10 practice of refusing to do business with, or offering unequal contracting terms to,
 11 African American-owned media companies.

12 101. Time Warner Cable has likewise refused to contract with Entertainment
 13 Studios for channel carriage and advertising. In the face of the then-pending merger
 14 between Comcast and Time Warner Cable, Time Warner Cable delegated channel
 15 carriage decision-making authority to Comcast. Accordingly, Time Warner Cable
 16 engaged in the same discriminatory conduct as Comcast. Time Warner Cable
 17 adopted Comcast's racist policies and practices in connection with contracting for
 18 channel carriage. After Comcast demanded to know who Entertainment Studios
 19 was talking to at Time Warner Cable to get channel carriage, Time Warner Cable
 20 closed the door (at the instruction of Comcast) on negotiations and shut out
 21 Entertainment Studios.

22 **B. Damages**

23 102. But for Comcast's and Time Warner Cable's refusal to contract with
 24 Entertainment Studios, Entertainment Studios would receive approximately \$378
 25 million in annual license fees for its seven channels—calculated using a
 26 conservative license fee of fifteen cents per subscriber per month for each channel
 27 for Comcast / Time Warner Cable's combined 30 million subscribers. If Defendants
 28 contracted in good faith, Entertainment Studios would also receive an estimated

1 \$200 million per year, per channel, in national advertising sales revenue, or a total
2 of \$1.4 billion per year, equaling a combined total of \$1.8 billion in annual revenue.

3 103. Combining subscriber fees and advertising revenue, Entertainment
4 Studios would generate approximately \$1.8 billion in annual revenue from its
5 carriage and advertising contracts with Comcast / Time Warner Cable. Moreover,
6 with distribution on two of the largest television platforms in the nation, the demand
7 for Entertainment Studios' channels both domestically and internationally would
8 increase, leading to additional growth and revenue for Entertainment Studios'
9 channels.

10 104. Based on the revenue Entertainment Studios would generate if
11 Defendants contracted with them in good faith, Entertainment Studios would be
12 valued at approximately \$20 billion.

13 105. Similarly situated lifestyle and entertainment media companies are
14 valued at higher amounts. But for Comcast's and Time Warner Cable's refusal to
15 contract with Entertainment Studios, Entertainment Studios would have a similar
16 valuation.

17 106. Accordingly, Comcast's and Time Warner Cable's unlawful
18 discrimination has caused Entertainment Studios in excess of \$20 billion in
19 damages, according to proof at trial; plus punitive damages for intentional,
20 oppressive and malicious racial discrimination.

PRAYER FOR RELIEF

22 || **WHEREFORE**, Plaintiffs pray for judgment, as follows:

23 1. Plaintiff Entertainment Studios prays for compensatory, general and
24 special damages in excess of \$20 billion according to proof at trial;
25 2. Plaintiffs NAAAOM and Entertainment Studios pray for injunctive
26 relief prohibiting Comcast and Time Warner Cable from discriminating
27 against African American–owned media companies, including

1 Entertainment Studios, based on race in connection with contracting for
2 carriage and advertising;

3 3. Plaintiff Entertainment Studios prays for punitive damages, based on
4 oppression and malice, according to Defendants' net worth;
5 4. Plaintiff Entertainment Studios prays for attorneys' fees, costs and
6 interest; and
7 5. Plaintiffs NAAAOM and Entertainment Studios pray for such other
8 and further relief as the court deems just and proper.

9
10 DATED: September 21, 2015 Respectfully Submitted,

11 MILLER BARONDESS, LLP
12
13
14 By: /s/ Louis R. Miller
15 LOUIS R. MILLER
16 Attorneys for Plaintiffs
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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury pursuant to the Seventh Amendment of the United States Constitution.

DATED: September 21, 2015 MILLER BARONDESS, LLP

By: /s/ Louis R. Miller
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